IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 158 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NASIMBANU MAHMADHUSSAIN SHAIKH - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/03/2007

ORAL JUDGMENT

1.0 By way of this petition, the externee has challenged the order dated 29.09.2006 passed by the Deputy Police Commissioner, Ahmedabad respondent No.2 as well as order dated 13.12.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.3.

2.0 Learned Advocate for the externee has

invited my attention to the show-cause notice dated 01.07.2006 issued by respondent No.2. In the said show-cause notice, two offences have been mentioned as registered against the externee. Pursuant to the issuance of aforesaid show-cause notice, the externee, filed her final written reply on 06.09.2006. Thereafter, order dated 29.09.2005 was passed by respondent No. 2 externing the externee.

2.1 The externee has challenged the order of externment on various Counts. However, learned Advocate for the externee, has restricted his arguments to vague nature of show-cause notice and non-consideration of aspect of examination of witnesses by the externee by the externing Authority. He has stated that the show cause notice is vague in nature because there is no mention about time, place, period and area of operation of prejudicial activities of the externee in the said show-cause notice, and therefore, the order of externment is bad in law

and is required to be quashed and set aside. In support of his case he has placed reliance on a decision of this Court in the case of ***"Kalubhai Becharbhai Gohil Vs. State of Gujarat & anr."*** reported in 2003(2) GLR 1612 wherein it is held as under,

> "After receiving reply from the concerned person, the authority is required to apply its mind before passing the final order. Issuance of show-cause notice is, therefore, a matter of substance and not a formality. Looking to the four instances cited in the show-cause notice, it is impossible for anyone to give appropriate reply, because, in a very vague manner, the incidents are described. The authority at least should have given some particulars at least about particular month, in which the so-called incident had happened, and should have given some better description of the are where the incident had happened. Mere allegation that some 8 or 9 months back, at midnight, the externee had visited house of someone, can never be said to be compliance with the requirement of giving particulars in the show-cause notice. Even if the authority may not be supposed to give the exact date on which the aforesaid incident had happened, at least is required to be given so that a person can give an effective reply. At the cost of repetition, it is stated that the authority has not given the month during which the so-called act is committed by

> the externee. The notice in question, therefore, on the face of it, is absolutely vague."

2.2 Learned Advocate has further submitted that the externee, in support of her case had examined as many as twelve witnesses, and the said vital aspect was not taken into consideration by the Authorities.

3.0 On the contrary, Learned A.P.P. has supported the orders of the Authorities and has submitted that the authorities are invested with the powers to extern such miscreants from adjoining districts by the provision itself for a period necessary and therefore the order cannot be challenged.

4.0 Heard learned counsel for the parties and perused the documents placed on record. In my view externing authority before passing the order of externment, must satisfy subjectively that no witnesses are willing to come forward to depose

against the externee. In the case on hand, in the show cause notice dated 01.07.2006, the Authority has vaguely mentioned that there are two cases registered against the externee. However, the Authority has not given any details pertaining to the aforesaid offences i.e. place, period and area of operation of prejudicial activities of the externee. Apart from that while passing the impugned order, the externing Authority has not taken into consideration the statements of witnesses examined by the externee. It may also be noted that the externee had filed an appeal before respondent No.1 raising the very same ground of vague nature of notice and non-consideration of aspect of examination of witnesses done by the externee. But, the same was not considered by respondent No.1 and on the contrary respondent No.1 confirmed the order of externment passed by respondent No.2 which shows total non-application of mind on the part of respondent No.1. Hence, in view of the above discussion as well as in view of the decision of

this Court in the case of "***Kalubhai Becharbhai Gohil***"(Supra), the order of externment deserves to be quashed and set aside.

5.0 In view of the above, the petition is allowed. The orders dated 29.09.2006 passed by the Deputy Police Commissioner, Ahmedabad respondent No.2 as well as order dated 13.12.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.1 are quashed and set aside. Rule is made absolute. Direct service is permitted.

(K.S. Jhaveri,J.)

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